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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MAR 10 2005

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KRISTIN K. MAYES

2005 MAR 10 P 2: 25

AZ CORP COMMISSION
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IN THE MATTER OF DIVERSIFIED WATER UTILITIES, INC. TO EXPAND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO INCLUDE ALL OF SECTIONS 13, 14, 15, 23 AND THAT PORTION OF SECTION 16 EAST OF RAILROAD TRACKS ALL IN T3S, R83, PINAL COUNTY, ARIZONA.

DOCKET NO. W-02859A-04-0844

IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR WATER SERVICE.

DOCKET NO. WS-02987A-04-0869

**RESPONSE TO DIVERSIFIED
WATER UTILITIES, INC.,
MARCH 4, 2005 FILING**

On March 4, 2005, Diversified Water Utilities, Inc. ("Diversified") filed a pleading entitled "Application to Amend Decision No. 63960, as Amended, and Request for Expedited Action", (hereinafter referred to as "Filing"). This Filing comes about 87 days after its application entitled "Application to Expand its Certificate either by Amending Decision No. 63960 (as Amended) or alternatively, as a New Application" (hereinafter referred to as "Application") regarding the same territory was declared insufficient by Arizona Corporation Commission Staff ("Staff"). Diversified's Filing is confusing and complicates an already complicated matter. Staff believes that Diversified's Filing is asking for the same thing as its Application, with regards to amending Decision No. 63960. The Commission did not decide to take up that filing under A.R.S. § 40-252 and is not obligated to do so now. In any event, the Commission could order an evidentiary proceeding under A.R.S. § 40-252 for any request to amend any Commission order. Given the significant passage of time and significant factual changes that have occurred, the fact that both Diversified and Johnson Utilities Company ("Johnson") are applying for the same area to extend their respective Certificates of Convenience and Necessity ("Certificates") and that there is already a consolidated proceeding to

1 handle those applications, Diversified's Filing should be denied and consolidated Docket Nos. W-
2 02859A-04-0844 and WS-02987A-04-0869 go to an evidentiary hearing without suspension.

3 Diversified's Application was filed November 26, 2004. Staff indicated to Diversified that it
4 was going to treat this matter as a new application. Staff filed its insufficiency letter on this
5 application on December 7, 2004. At no time, between November 26, 2004 and March 4, 2005, did
6 Diversified seek reconsideration of Staff's intent to treat the application as a new application.
7 Diversified had over eighty days to do so, since the insufficiency letter was sent. Essentially,
8 Diversified is now requesting a reconsideration of the treatment of its Application when significant
9 time has elapsed. Given that Diversified, by the Application, requested the alternative of having the
10 matter treated as a new application, Diversified's Filing is especially confusing. It is also untimely,
11 given the significant passage of time between November 26, 2004 and March 4, 2005. In addition,
12 Diversified's Filing was made *after* its Application was consolidated with Johnson's application in
13 Docket No. WS-02987A-04-0869, and one business day before a procedural conference on the
14 consolidated matters. Staff sees no reason that the Commission must consider Diversified's Filing,
15 given the present process for its Application.

16 Furthermore, even if Diversified's Filing was accepted, the Commission always has the
17 option, per A.R.S. § 40-252, to mandate further evidentiary proceedings. Staff would strongly
18 recommend an evidentiary hearing under any scenario, new application or application to amend
19 Decision No. 63960. Decision No. 63960 was issued September 4, 2001. That decision was amended
20 twice, in Decision No. 64062 (October 4, 2001) and Decision No. 65840 (December 22, 2003).
21 Significant time has elapsed since the original decision was issued. Furthermore, Finding of Fact No.
22 150 in Decision No. 63960 highlights Staff's concerns about the tentative status of prospective
23 developments at that time.

24 150. Staff's witness, Mr. Mark DiNunzio, emphasized that he is not convinced that the
25 development will take place in a timely manner as previously stated because he
26 believes that there has been a good deal of speculation presented by developers
27 who would be able to capitalize on the increased value of their property if it is
28 included in a utility's Certificate. Therefore, Mr. DiNunzio recommends that any
Certificate from this proceeding be granted conditionally and subject to a review
after two years to determine the extent of development, or lack thereof, and file a
report either recommending final approval of the Certificate as requested, final
approval of the Certificate for the portions of the areas requested where
development has taken place with a cancellation of the remaining areas, and/or

disapproval of the Certificate for all areas requested if no development has occurred.

See Decision No. 63960, at 27.

While not entirely adopting Staff's recommendation, the Commission expressed its appreciation of Staff and highlighted this uncertainty regarding proposed development at the time of this decision in Finding of Fact No. 170.

170. After reviewing the evidence in its entirety, we commend Staff at the end of this long and complex proceeding and find the majority of their recommendations are reasonable in light of the speculative nature of the purported development which is to take place in large undeveloped areas in Pinal County, Arizona. Based on this speculation, we believe Staff has made well-reasoned unbiased recommendations with respect to recommending the issuance of conditional Certificates which will be subject to further Commission review in the future.

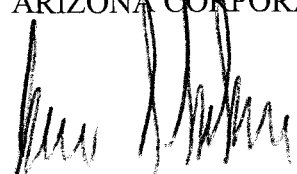
Id. at 32.

Both of these findings were affirmed in Decision No. 64062 at pages 27 and 33 respectively. Clearly, the Commission was uncomfortable with simply granting extensions to any entity's Certificates unconditionally, given the uncertain and mercurial status of development in these sections. Much appears to have changed since these decisions. In addition, Sections 13 and 23 of Township 3 South Range 8 East are being sought by both Johnson and Diversified. A case and controversy clearly exists over whether Johnson and/or Diversified are fit and proper entities to serve these areas and who is perhaps more fit and proper to serve water in those sections. Given all of the factors above, Staff believes a full evidentiary process is necessary to ensure that all of the facts and changes that have occurred since September of 2001 are considered. Simply amending Decision No. 63960 here – without a full evidentiary record – does not allow for changed circumstances to be considered by the Commission and is not in the public interest.

1 Staff believes, in short, that considering Diversified's Application -- filed November 26, 2004
2 -- as a new application is still the prudent course of action. Staff does not believe that these
3 consolidated dockets should be stayed in light of Diversified's Filing on March 4, 2005. Staff would
4 recommend that Diversified's Filing be denied.

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6 RESPECTFULLY SUBMITTED on the 11th day of March, 2005

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8 ARIZONA CORPORATION COMMISSION

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19 Original and fifteen (15) copies of
20 the foregoing was filed this 11th
21 day of March, 2005, with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 West Washington
25 Phoenix, AZ 85007

26 Copies of the foregoing were
27 mailed / hand-delivered this 11th
28 day of March, 2005, to:

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